

AMENDED IN ASSEMBLY MARCH 23, 2011
AMENDED IN ASSEMBLY FEBRUARY 16, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 81

Introduced by Assembly Member Beall
(Coauthor: Assembly Member Jeffries)

January 4, 2011

An act to add and repeal Section 6357.8 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as amended, Beall. Sales and use taxes: exemptions: fuel and petroleum products: air common carriers.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from that tax, including an exemption for the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business on an international flight.

This bill would, on or after January 1, 2012, ~~and before January 1, 2020~~, exempt from those state taxes, gross receipts in excess of ~~\$2.22 per gallon~~ *the average spot price over the previous 5 years, per gallon*, derived from the sale in this state of, and the storage, use, or other consumption in this state of, fuel and petroleum products sold to or

purchased by an air common carrier for consumption or shipment in the conduct of its business on a domestic flight, as specified. *The bill would repeal these provisions on January 1, 2017, unless the Employment Development Department makes a specified finding, in which case the bill would repeal these provisions on January 1, 2020.*

This bill would also require the State Board of Equalization, beginning on January 1, 2013, and annually thereafter, to submit a report to the Legislature setting forth the state fiscal impact of the exemption.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes, unless the governing body of the taxing county, city, or district authorizes an exemption and provides notice to the board on or before December 1, 2011.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6357.8 is added to the Revenue and
2 Taxation Code, to read:
3 6357.8. (a) (1) On and after January 1, 2012, and before
4 December 31, 2019, there are exempted from the taxes imposed
5 by this part, gross receipts in excess of ~~two dollars and twenty-two~~
6 ~~cents (\$2.22) per gallon~~ *the average spot price over the previous*
7 *five fiscal years, per gallon, as determined by the board, derived*
8 *from the sale in this state of, or the storage, use, or other*
9 *consumption in this state of, fuel and petroleum products sold to*
10 *or purchased by an air common carrier for consumption or*
11 *shipment in the conduct of its business as an air common carrier,*
12 *on a domestic flight.*
13 (2) *For the 2011–12 fiscal year, the board shall, on or before*
14 *October 1, 2011, determine the average spot price over the*
15 *previous five fiscal years, per gallon, derived from the sale in this*

1 *state of, or the storage, use, or other consumption in this state of,*
2 *fuel and petroleum products sold to or purchased by an air*
3 *common carrier for consumption or shipment in the conduct of its*
4 *business as an air common carrier, on a domestic flight.*

5 (3) *For the 2012–13 fiscal year and each fiscal year thereafter,*
6 *the board shall, on or before March 1 preceding that fiscal year*
7 *determine the average spot price over the previous five fiscal years,*
8 *per gallon, derived from the sale in this state of, or the storage,*
9 *use, or other consumption in this state of, fuel and petroleum*
10 *products sold to or purchased by an air common carrier for*
11 *consumption or shipment in the conduct of its business as an air*
12 *common carrier, on a domestic flight.*

13 (b) To qualify for the exemption, the air common carrier shall
14 furnish to the seller an exemption certificate in the form prescribed
15 by the board. Acceptance in good faith of that certificate shall
16 relieve the seller from liability for that portion of the sales tax
17 exempted under this section.

18 (c) For purposes of this section, the following definitions apply:

19 (1) “Air common carrier” has the same meaning as that set forth
20 in Section 23046 of the Business and Professions Code.

21 (2) “Domestic flight” means a flight whose final destination is
22 a point inside of the United States, including its territories.

23 (d) Any air common carrier claiming exemption under this
24 section that is not required to hold a valid seller’s permit, shall be
25 required to register with the board and obtain a fuel exemption
26 registration number, and shall be required to file returns as the
27 board may prescribe, either if the board notifies the carrier that
28 returns must be filed or if the carrier is liable for taxes based upon
29 consumption or transportation of fuel or petroleum products
30 erroneously claimed as exempt under this section.

31 (e) An air common carrier claiming an exemption under this
32 section, upon request, shall make available to the board records,
33 including, but not limited to, a copy of a log abstract, an air waybill,
34 or a cargo manifest, documenting its consumption or transportation
35 of the fuel or petroleum products on a domestic flight and the
36 amount claimed as exempt. If the carrier fails to provide these
37 records upon request, the board may revoke the carrier’s fuel
38 exemption registration number.

39 (f) The board may require any air common carrier claiming an
40 exemption under this section and required to obtain a fuel

1 exemption registration number, to place with it such security as
2 the board may determine pursuant to Section 6701.

3 (g) Pursuant to this section, any use of the fuel and petroleum
4 products by the purchasing carrier, other than that incident to the
5 delivery of the fuel and petroleum products to the carrier and the
6 consumption or transportation of the fuel and petroleum products
7 by the carrier on a domestic flight for use in the conduct of its
8 business as a common carrier, or a failure of the carrier to document
9 its consumption or transportation of the fuel and petroleum
10 products on a domestic flight, shall subject the carrier to liability
11 for payment of sales tax as if it were a retailer making a retail sale
12 of the property at the time of that use or failure, and the sales price
13 of the property to it shall be deemed to be the gross receipts from
14 the retail sale.

15 (h) (1) Notwithstanding any provision of the Bradley-Burns
16 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
17 with Section 7200)) or the Transactions and Use Tax Law (Part
18 1.6 (commencing with Section 7251)), the exemption established
19 by this section shall not apply with respect to any tax levied by a
20 county, city, or district pursuant to, or in accordance with, either
21 of those laws, unless approved by the local government that would
22 otherwise receive the revenues derived from the taxes imposed
23 under those laws.

24 (2) The governing body of any county, city, or district may enact
25 an ordinance to authorize the exemption as described in subdivision
26 (a) with respect to taxes levied by that entity, and shall notify the
27 State Board of Equalization of this action on or before December
28 1, 2011.

29 (i) (1) On January 1, 2013, and annually thereafter, the State
30 Board of Equalization shall submit a report to the Legislature
31 setting forth the state fiscal impact of the exemption allowed under
32 this section.

33 (2) A report to be submitted pursuant to paragraph (1) shall be
34 submitted in compliance with Section 9795 of the Government
35 Code.

36 (j) This section shall remain in effect only until January 1, ~~2020~~
37 ~~2017~~, and as of that date is repealed, *unless the Employment*
38 *Development Department makes a finding on or before January*
39 *1, 2017, that 2,000 or more jobs have been created as a result of*

1 *this section, in which case this section shall remain in effect until*
2 *January 1, 2020, and as of that date is repealed.*

3 SEC. 2. Notwithstanding Section 2230 of the Revenue and
4 Taxation Code, no appropriation is made by this act and the state
5 shall not reimburse any local agency for any sales and use tax
6 revenues lost by it under this act.

7 SEC. 3. This act provides for a tax levy within the meaning of
8 Article IV of the Constitution and shall go into immediate effect.

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